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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/709,360
Filing Date: April 29, 2004
Appellant(s): LASKIN ET AL.

Clark A. Jablon
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed February 2, 2009 appealing from the Office action mailed August 21, 2008.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments

The statement of the status of the amendments contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(7) Prior Art of Record

2004/0078271	MORANO et al	10-2002
"Dividend and Capital Gain Changes under the Jobs and Growth Tax Reconciliation Act (JGTRRA): Adding Complexity for Investors"	Eighner, Sheryl and Essig, Christopher; PriceWaterhouse Coopers; PFS. 125; pp 6-7	07/08-2003
7,016,873	PETERSON et al	09-2000

(8) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-6, 8-14, 16-30, 32-37, and 39-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morano et al. (Pub. No.: US 2004/0078271) in view of the publication on July/August of 2003 of PriceWaterhouse Coopers (herein referred to as PWC) from the Personal Financial Services Newsletter titled "Dividend and Capital Gain Changes under the Jobs and Growth Tax Relief Reconciliation Act (JGTRRA): Adding Complexity for Investors". This rejection is set forth in the prior Office Action, mailed August 21, 2008.

Claims 7, 15, 31, and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morano et al. (Pub. No.: US 2004/0078271) in view of PWC, and further in view of Peterson et al. (Pat. No.: US 7,016,873). This rejection is set forth in the prior Office Action, mailed August 21, 2008

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-6, 8-14, 16-30, 32-37, and 39-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morano et al. (Pub. No.: US 2004/0078271) in view of the publication on July/August of 2003 of PriceWaterhouse Coopers (herein referred to as PWC) from the Personal Financial Services Newsletter titled "Dividend and Capital Gain Changes under the Jobs and Growth Tax Relief Reconciliation Act (JGTRRA): Adding Complexity for Investors".

As to Claim 1, *Morano* teaches an automated computer-implemented apparatus for determining the dividend income of one or more investors for a selected time frame resulting from mutual fund dividend distributions made to accounts of the investors from one or more mutual funds (see at least Abstract, Figure 1, ¶[0001], ¶[0033], ¶[0034], ¶[0076], and ¶[0122]) the apparatus comprising:

(a) a first electronic database that stores account transaction history data of the investors for each of the mutual funds (see at least Figure 5 - items 550, 560, and 570, ¶[0001], ¶[0034], ¶[0038], ¶[0041], ¶[0060], and ¶[0063]);

(b) a second electronic database that stores dividend distribution information for each of the mutual funds and information indicating what percentage of dividend distributions of each of the mutual funds are QDI (see at least Figure 5 – items 500 and 510, ¶[0001], ¶[0034], ¶[0041], ¶[0060] through ¶[0063], ¶[0110], and ¶[0118]); and

(c) a QDI calculation engine which receives and processes the account transaction history data, the dividend distribution information, and the percentage of mutual fund dividend distributions that are QDI from the first and second electronic databases to automatically determine in a computer the personal QDI for a selected time frame for one or more of the investors, the account transaction history data being used to provide transaction data for a specific investor and to determine whether holding period requirements are met for a specific investor (see at least Figure 1, Figure 5 – item 540, ¶[0001], ¶[0033], ¶[0034], ¶[0041], ¶[0043], ¶[0055], ¶[0056], ¶[0076] ¶[0080], ¶[0102], ¶[0107], ¶[0108], ¶[0110], and ¶[0118]) .

Morano does not specifically teach QDI or personal QDI. However, it was known in the art at the time of invention that calculation of the relevant dividend income would include QDI and relevant individual dividend income would include personal QDI per *PWC* (see at least page 6, columns 2-3, and page 7, column 1). It would have been obvious to one of ordinary skill in the

art at the time of the invention to include such information for convenience to the customer in minimizing their tax liability and complying with then current law.

Morano, also, does not specifically teach a calculation engine used to determine whether holding period requirements are met for a specific investor. However, it was known in the art at the time of invention that holding period would be included in the account transaction history data per *PWC* (see at least page 6, columns 2-3). It would have been obvious to one of ordinary skill in the art at the time of the invention to include such information for convenience to the customer in minimizing their tax liability and complying with then current law.

As to Claim 2, *Morano* teaches a user interface for allowing an investor to communicate via a communication medium with the calculation engine to initiate a request for an individual dividend calculation to be performed for a selected time frame and for one or more selected accounts, wherein the calculation engine automatically performs the determination of the individual dividend income calculation for the one or more selected accounts upon receiving a request from the user interface (see at least Figure 1, Figure 3, Background, ¶[0034], ¶[0040], ¶[0041], ¶[0047], ¶[0055], ¶[0056], ¶[0073], ¶[0083], and ¶[0118]).

Morano does not specifically teach QDI or personal QDI. However, it was known in the art at the time of invention that calculation of the relevant dividend income would include QDI and relevant individual dividend income would include personal QDI per *PWC* (see at least page 6, columns 2-3, and page 7, column 1). It would have been obvious to one of ordinary skill in the art at the time of the invention to include such information for convenience to the customer in minimizing their tax liability and complying with then current law.

As to Claim 3, *Morano* teaches that the user interface is a web browser and the communication medium is the Internet (see at least ¶[0035] and ¶[0036]).

As to Claim 4, *Morano* teaches a third electronic database that stores account type information for the accounts of the investors for each of the mutual funds, wherein the QDI calculation engine receives the account type information from the third electronic database and determines the personal QDI only for selected types of accounts (see at least Figure 1, Figure 5 – item 530 and 540, ¶[0001], ¶[0033], ¶[0037], ¶[0038], ¶[0055], ¶[0063], ¶[0066], and ¶[0118]).

Morano does not specifically teach QDI or personal QDI. However, it was known in the art at the time of invention that calculation of the relevant dividend income would include QDI and relevant individual dividend income would include personal QDI per *PWC* (see at least page 6, columns 2-3, and page 7, column 1). It would have been obvious to one of ordinary skill in the art at the time of the invention to include such information for convenience to the customer in minimizing their tax liability and complying with then current law.

As to Claim 5, *Morano* teaches that the dividend information includes dividend distribution frequency information (see at least ¶[0038], ¶[0062] – it is implicit that the frequency of dividend distribution would be included in this periodically updated information) and dividend amount per share information (see at least Figure 11, ¶[0038], ¶[0062], and ¶[0095]).

As to Claim 6, *Morano* teaches that the selected time frame is a calendar year (see at least ¶[0055], ¶[0073], ¶[0076] ¶[0080], ¶[0083], and ¶[0089]).

As to Claim 8, *Morano* teaches that the first electronic database and the second electronic database are subparts of the same electronic database (see at least Figure 1, ¶[0034], ¶[0038], ¶[0054], ¶[0063], and ¶[0118]).

Claim 9 is rejected for the same reasoning as Claim 1.

Claim 10 is rejected for the same reasoning as Claim 2.

Claim 11 is rejected for the same reasoning as Claim 3.

Claim 12 is rejected for the same reasoning as Claim 4.

Claim 13 is rejected for the same reasoning as Claim 5.

Claim 14 is rejected for the same reasoning as Claim 6.

Claim 16 is rejected for the same reasoning as Claim 8.

As to Claim 17, *Morano* teaches a computer-implemented method of automatically providing individual dividend income information to a mutual fund investor, the investor having one or more accounts in one or more mutual funds that declare dividend distributions (see at least Abstract, Background, Figure 5, ¶[0001], ¶[0033], ¶[0060], ¶[0064], ¶[0066], ¶[0095] and ¶[0108]), the method comprising:

(a) an investor inputting via a user interface (see at least Figure 1, Figure 2, ¶[0034], ¶[0040], and ¶[0073]):

(i) an indication of which accounts the individual dividend income information is desired (see at least Figure 9 – item 910, Figure 10, Figure 11, ¶[0055], ¶[0073], and ¶[0076]), and

(ii) a time frame for which the individual dividend income information is desired (see at least Figure 9 – item 910, Figure 10, Figure 11, ¶[0055], ¶[0073], and ¶[0076]);

(b) providing a first electronic database that stores account transaction history data of the mutual fund investor for each of the mutual funds held by the investor, and a second electronic database that stores dividend distribution information for each of the mutual funds held by the investor and information indicating what percentage of dividend distributions of each of the mutual funds held by the investor are QDI (see at least Figure 1, Figure 5 – item 540, ¶[0001], ¶[0033], ¶[0034], ¶[0038], ¶[0041], ¶[0043], ¶[0055], ¶[0056], ¶[0062], ¶[0076] ¶[0080], ¶[0095], ¶[0102], ¶[0110], and ¶[0118]);

(c) automatically determining in a computer the personal QDI for the indicated accounts and time frame by using a QDI calculation engine which receives and processes the investor inputs, the account transaction history data, the dividend distribution information, and the percentage of mutual fund dividend distributions that are QDI from the first and second electronic databases, the account transaction history data being used to provide transaction data for an investor and to determine whether holding period requirements are met for a specific investor (see at least Figure 1, Figure 5 – item 540, ¶[0001], ¶[0033], ¶[0034], ¶[0041],

¶[0043], ¶[0055], ¶[0056], ¶[0076] ¶[0080], ¶[0095], ¶[0102], ¶[0107], ¶0108], ¶[0110], and ¶[0118]); and

(d) automatically providing individual dividend income information for the investor from the determined individual dividend income (see at least Figure 5, ¶[0062], ¶[0095], ¶[0099], ¶[0108], and ¶[0118]).

Morano does not specifically teach QDI or personal QDI. However, it was known in the art at the time of invention that calculation of the relevant dividend income would include QDI and relevant individual dividend income would include personal QDI per *PWC* (see at least page 6, columns 2-3, and page 7, column 1). It would have been obvious to one of ordinary skill in the art at the time of the invention to include such information for convenience to the customer in minimizing their tax liability and complying with then current law.

Morano, also, does not specifically teach a calculation engine used to determine whether holding period requirements are met for a specific investor. However, it was known in the art at the time of invention that holding period would be included in the account transaction history data per *PWC* (see at least page 6, columns 2-3). It would have been obvious to one of ordinary skill in the art at the time of the invention to include such information for convenience to the customer in minimizing their tax liability and complying with then current law.

As to Claim 18, *Morano* teaches the inputted time frame is a previous year's income (see at least ¶[0046], ¶[0055], ¶[0073], ¶[0076] ¶[0080], ¶[0083], and ¶[0089] it is implicit that the user can input the time frame of the previous year), and the individual dividend income information includes for each account:

(i) total ordinary dividends from Form 1099-DIV for the previous year (see at least ¶[0046], ¶[0055], ¶[0064], ¶[0073], ¶[0076] through ¶[0078], ¶[0080], ¶[0081], ¶[0083], ¶[0089] - it is implicit that the user can input the time frame of the previous year and the corresponding information on the Form 1099-DIV),

(ii) qualified dividends from Form 1099-DIV for the previous year (see at least ¶[0046], ¶[0055], ¶[0064], ¶[0073], ¶[0076] through ¶[0078], ¶[0080], ¶[0081], ¶[0083], ¶[0089] - it is implicit that the user can input the time frame of the previous year and the corresponding information on the Form 1099-DIV), and

(iii) individual dividend income amount for the previous year (see at least ¶[0046], ¶[0055], ¶[0064], ¶[0073], ¶[0076] through ¶[0078], ¶[0080], ¶[0081], ¶[0083], ¶[0089] - it is implicit that the user can input the time frame of the previous year and the corresponding information on the Form 1099-DIV).

Morano does not specifically teach QDI or personal QDI. However, it was known in the art at the time of invention that calculation of the relevant dividend income would include QDI and personal QDI per *PWC* (see at least page 6, columns 2-3, and page 7, column 1). It would have been obvious to one of ordinary skill in the art at the time of the invention to include such information for convenience to the customer in minimizing their tax liability and complying with then current law.

As to Claim 19, *Morano* teaches the inputted time frame is an inputted number of days for the current year, and the individual dividend income information includes for each account (see at least Figure 7 through Figure 11, ¶[0002] through ¶[0004], ¶[0046], ¶[0061] through

¶[0065], and ¶[0107] – it is implicit that the updating process would result in the inputted time frame to include an inputted number of days):

> (i) total ordinary dividends paid to date for the current year (see at least Figure 7 through Figure 11, ¶[0002] through ¶[0004], ¶[0046], ¶[0061] through ¶[0065], ¶[0095], and ¶[0107 – it is implicit that the updating process would ultimately provide total ordinary dividends paid to date for the current year), and
>
> (ii) estimated individual dividend income amount to date for the current year (see at least Figure 7 through Figure 11, ¶[0002] through ¶[0004], ¶[0046], ¶[0061] through ¶[0065], ¶[0095], and ¶[0107] – it is implicit that the updating process would ultimately provide estimated individual dividend income amount to date for the current year).

Morano does not specifically teach QDI or personal QDI. However, it was known in the art at the time of invention that calculation of the relevant dividend income would include QDI and personal QDI per *PWC* (see at least page 6, columns 2-3, and page 7, column 1). It would have been obvious to one of ordinary skill in the art at the time of the invention to include such information for convenience to the customer in minimizing their tax liability and complying with then current law.

As to Claim 20, *Morano* teaches a third electronic database that stores account type information for the accounts of the investors for each of the mutual funds, wherein the QDI calculation engine receives the account type information from the third electronic database, the account type information being used to indicate on the user interface which accounts are eligible

for the personal QDI information (see at least Figure 1, Figure 5 – item 530 and 540, ¶[0001], ¶[0033], ¶[0037], ¶[0038], ¶[0055], ¶[0063], ¶[0066], and ¶[0118]).

Morano does not specifically teach QDI or personal QDI. However, it was known in the art at the time of invention that calculation of the relevant dividend income would include QDI and personal QDI per *PWC* (see at least page 6, columns 2-3, and page 7, column 1). It would have been obvious to one of ordinary skill in the art at the time of the invention to include such information for convenience to the customer in minimizing their tax liability and complying with then current law.

As to Claim 21, *Morano* teaches that the first electronic database and the second electronic database are subparts of the same electronic database (see at least Figure 1, ¶[0034], ¶[0038], ¶[0054], ¶[0063], and ¶[0118]).

As to Claim 22, *Morano* teaches a computer-implemented method of automatically generating individual dividend income information for selected mutual fund investors, each investor having one or more accounts in one or more mutual funds that declare dividend distributions, the method comprising (see at least Abstract, ¶[0001], ¶[0033], ¶[0034], ¶[0037], ¶[0038], ¶[0054], ¶[0055], ¶[0062], ¶[0063], ¶[0083], and ¶[0118]):

> (a) automatically identifying in a computer mutual fund investors who are recipients of a Form 1099-DIV for at least one mutual fund, the Form 1099-DIV including the QDI for each of the mutual funds that are eligible for QDI (see at least Figures 9 through 11, Abstract, ¶[0001], ¶[0033], ¶[0034], ¶[0060], ¶[0062]

through ¶[0066], ¶[0076], ¶[0094], ¶[0095], ¶[0107], ¶[0111], ¶[0115], and ¶[0118]);

(b) automatically performing in the computer a personal QDI calculation for each of the recipients (see at least Figures 9 through 11, Abstract, ¶[0001], ¶[0033], ¶[0055], ¶[0056], ¶[0064], ¶[0107], and ¶[0118]);

(c) automatically comparing in the computer the personal QDI and the QDI on the Form 1099DIV (see at least Figures 9 through 11, Abstract, ¶[0001], ¶[0033], ¶[0055], ¶[0056], ¶[0064], ¶[0095], ¶[0107], and ¶[0118]); and

(d) generating personal QDI information in the computer for only the mutual fund investors that have personal QDI that is less than the QDI on the Form 1099-DIV (see at least Figures 9 through 11, Abstract, ¶[0001], ¶[0033], ¶[0034], ¶[0040], ¶[0055], ¶[0056], ¶[0064], ¶[0095], ¶[0107], and ¶[0118]).

Morano does not specifically teach QDI or personal QDI. However, it was known in the art at the time of invention that calculation of the relevant dividend income would include QDI and relevant individual dividend income would include personal QDI per *PWC* (see at least page 6, columns 2-3, and page 7, column 1). It would have been obvious to one of ordinary skill in the art at the time of the invention to include such information for convenience to the customer in minimizing their tax liability and complying with then current law.

As to Claim 23, *Morano* teaches:

(i) providing a first electronic database that stores account transaction history data of the mutual fund investors for each of the mutual funds (see at least Figure 1,

Figure 5 - items 550, 560, and 570, ¶[0001], ¶[0034], ¶[0038], ¶[0041], ¶[0060], ¶[0063], and ¶[0118]);

(ii) providing a second electronic database that stores dividend distribution information for each of the mutual funds and information indicating what percentage of dividend distributions of each of the mutual funds are QDI (see at least Figure 5 – items 500 and 510, ¶[0001], ¶[0034], ¶[0041], ¶[0060] through ¶[0063], ¶[0110], and ¶[0118]); and

(iii) automatically determining in the computer the personal QDI for a selected time frame for each of the recipients using a QDI calculation engine which receives and processes the account transaction history data, the dividend distribution information, and the percentage of mutual fund dividend distributions that are QDI from the first and second electronic databases, the account transaction history data being used to provide transaction data for a specific recipient and to determine whether holding period requirements are met for a specific recipient (see at least Figure 1, Figure 5 – item 540, ¶[0001], ¶[0033], ¶[0034], ¶[0041], ¶[0043], ¶[0055], ¶[0056], ¶[0076] ¶[0080], ¶[0102], ¶[0107], ¶[0108], ¶[0110], and ¶[0118]).

Morano does not specifically teach QDI or personal QDI. However, it was known in the art at the time of invention that calculation of the relevant dividend income would include QDI and relevant individual dividend income would include personal QDI per *PWC* (see at least page 6, columns 2-3, and page 7, column 1). It would have been obvious to one of ordinary skill in the

art at the time of the invention to include such information for convenience to the customer in minimizing their tax liability and complying with then current law.

Morano, also, does not specifically teach a calculation engine used to determine whether holding period requirements are met for a specific investor. However, it was known in the art at the time of invention that holding period would be included in the account transaction history data per *PWC* (see at least page 6, columns 2-3). It would have been obvious to one of ordinary skill in the art at the time of the invention to include such information for convenience to the customer in minimizing their tax liability and complying with then current law.

As to Claim 24, *Morano* teaches that the first electronic database and the second electronic database are subparts of the same electronic database (see at least Figure 1, ¶[0034], ¶[0038], ¶[0054], ¶[0063], and ¶[0118]).

Claim 25 is rejected for the same reasoning as Claim 1.

Claim 26 is rejected for the same reasoning as Claim 2.

Claim 27 is rejected for the same reasoning as Claim 3.

Claim 28 is rejected for the same reasoning as Claim 4.

Claim 29 is rejected for the same reasoning as Claim 5.

Claim 30 is rejected for the same reasoning as Claim 6.

Claim 32 is rejected for the same reasoning as Claim 9.

Claim 33 is rejected for the same reasoning as Claim 10.

Claim 34 is rejected for the same reasoning as Claim 11.

Claim 35 is rejected for the same reasoning as Claim 12.

Claim 36 is rejected for the same reasoning as Claim 13.

Claim 37 is rejected for the same reasoning as Claim 14.

Claim 39 is rejected for the same reasoning as Claim 17.

Claim 40 is rejected for the same reasoning as Claim 18.

Claim 41 is rejected for the same reasoning as Claim 19.

Claim 42 is rejected for the same reasoning as Claim 20.

Claim 43 is rejected for the same reasoning as Claim 22.

Claim 44 is rejected for the same reasoning as Claim 23.

Claims 7, 15, 31, and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morano et al. (Pub. No.: US 2004/0078271) in view of PWC, and further in view of Peterson et al. (Pat. No.: US 7,016,873).

As to Claim 7, while *Morano* discloses a calculation engine (see at least Figure 1, ¶[0034], and ¶[0041]), it does not specifically disclose that the calculation engine uses a first in first out (FIFO) redemption methodology to make the holding period determination. However, it was well know to one of ordinary skill in the art to use a first in first out (FIFO) redemption methodology to make the holding period determination. *Peterson* discloses using a first in first out (FIFO) redemption methodology to make the holding period determination (see at least Col. 3, lines 62-67 and Col. 4, lines 1-9).

Morano does not specifically teach QDI. However, it was known in the art at the time of invention that calculation of the relevant dividend income would include QDI per *PWC* (see at least page 6, columns 2-3, and page 7, column 1). It would have been obvious to one of ordinary skill in the art at the time of the invention to include such information for convenience to the customer in minimizing their tax liability and complying with then current law.

Claim 15 is rejected for the same reasoning as Claim 7.

Claim 31 is rejected for the same reasoning as Claim 7.

Claim 38 is rejected for the same reasoning as Claim 15.

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(9) Response to Argument

Appellant begins substantive argument at page 10, paragraph 1, of the Appeal Brief. Appellant argues that there is no proper motivation to modify Morano's process in view of PWC to include a "QDI calculation engine...to automatically determine the personal QDI" (claims 1, 25); or to "automatically [determine] the personal QDI...using a QDI calculation engine" (claims 9, 17, 32, 39); or to "automatically [perform] a personal QDI calculation" (claims 22 and 43). In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning at page 12, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the

applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Examiner argues that the Morano and PWC references pertain to analogous art and that the result of combining the art would be predictable.

Appellant also argues at pages 13 and 14 that the PWC reference teaches away from the primary reference. Examiner respectfully disagrees. The principle of the proposed modification of Morano does not change the operation or intent of the primary reference.

In response to applicant's arguments at page 14 against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.,* 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Appellant argues that each reference fails to teach a feature. The Examiner relied on each teaching for what they teach and what one of ordinary skill in the art would have inferred from their possible combination. The test for obviousness is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

At the bottom of page 14 through page 15, Appellant argues that no rationale is provided for generating personal QDI statements for only those investors who need one and that modifying Morano to teach such feature would constitute improper hindsight. Appellant fails to recognize what the references would suggest to one of ordinary skill in the art. Specifically, the combination of Morano and PWC would be obvious because:

1) Morano discloses a method of automatically generating individual dividend income information for selected mutual fund investors.

2) PWC discloses a need to provide year-end statements sent to mutual fund investors separating dividends that qualify from those that do not.

3) The combination of Morano and PWC would have been obvious because it would have provided the customer greater convenience in minimizing their tax liability and complying with then current law.

At the bottom of page 15 through the top of page 16, Appellant again argues against the references individually. Appellant argues that each reference fails to teach a feature. The Examiner relied on each teaching for what they teach and what one of ordinary skill in the art would have inferred from their possible combination. The test for obviousness is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Appellant reiterates all previous arguments at pages 16 and 17 and argues further that Examiner's Final Rejection failed to rebut Appellant's arguments for patentability. Examiner points to pages 17 and 18 of the Final Office Action dated August 21, 2008 where Examiner addresses Appellant's arguments in their entirety. As to the dependent claims, Appellant states that these are believed to be allowable because they depend upon respective allowable independent claims. However, for the reasons argued above and in previous office actions, Examiner believes that the dependent claims have been properly rejected.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Irene Kang
April 28, 2009

Conferees:

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